

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	CASE NO. 13-52206-RBK
	§	
STEPHEN B. DONNELLY	§	
	§	
DEBTOR	§	CHAPTER 7

**TRUSTEE'S MOTION TO SELL REAL PROPERTY
FREE AND CLEAR OF ALL LIENS AND INTERESTS**

This pleading requests relief which may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely response is necessary for a hearing to be held.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JOSE C. RODRIGUEZ, TRUSTEE, and files this Motion to Sell Real Property Free and Clear of All Liens and Interests and as grounds would show the following:

1. On August 16, 2013, Stephen Donnelly filed for relief under Chapter 11 of the United States Bankruptcy Code. On April 01, 2014, this Court entered its Order Converting the Case to a Chapter 7 proceeding. Jose C. Rodriguez was appointed Chapter 7 Trustee and continues to serve in that capacity.

Property to Be Sold

2. The Trustee, as successor in interest to the Debtor, acquired an interest in certain non-exempt real property, which is described as:

All those certain tracts or parcels of land lying and being situated in Comal County, Texas, being designated as Lot 207, Mystic Shores 2 also known as 354 Astral Point, Spring Branch, Comal County, Texas (hereinafter, the "Property").

3. The Trustee now seeks court authorization to sell the Property.

Proposed Purchaser and Proposed Purchase Price

4. The proposed Buyers are: James E. Feucht and Gretchen R. Feucht, 385 Mystic Parkway, Spring Branch, TX 78070.

5. The purchase bid is Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00), which is to be paid in cash or certified funds.

Trustee's Estimated Value and Basis Thereof

6. The debtor scheduled the value of the Property as \$310,100.00. The Comal County Appraisal District listed the market value of the Property in the amount of \$305,450.00 for tax appraisal purposes for the 2014 tax year.

Liens

7. From information available to the trustee as of the date of this motion, the Property is subject to the following interests:

- a. The title to the Property is in the name of Stephen Donnelly and Ashley Donnelly. Trustee is informed, and believes, and so alleges, that the Property is community property subject to joint management and control.
- b. The Property may be subject to claims and interests held by Mystic Shores Property Owners Association as shown in Proof of Claim Number 8 filed in this case on December 9, 2013.
- c. The Property may be subject to valorem taxes as shown, in part, in Proof of Claim Number 9 filed on December 10, 2013. The ad valorem taxes will be paid as part of the sale closing.

8. Except as set out herein, the Trustee is not aware of any other interests, liens or encumbrances on the Property. Nevertheless, pursuant to Sections 363(c) and (f) of the Bankruptcy Code, this sale is made free and clear of any and all liens, claims, interests or encumbrances of any kind.

9. The debtor, and/or all creditors claiming a lien, security interest, or other interest or entitlement in the Property and the cash proceeds thereof must file with the Clerk of this Court (with a copy to the Trustee), within 21 days from the date of this Motion, a response specifying such creditor's interest in the Property and whether the respondent party opposes the sale terms as set forth above. All creditors claiming a lien, security interest, or entitlement in the Property or the sale cash proceeds thereof will have their lien or security interest attach to the net proceeds of sale set out below if (1) the Court approves this sale and (2) subsequently determines such claim is to be an allowed secured claim.

Tax Consequences

10. In further support of the Motion, Trustee believes this sale will not have a negative tax consequence that would be detrimental to the estate. Trustee has estimated the effect of tax consequences for this transaction based on a consideration of the outstanding liens, the costs of the sale, the costs of administration, and a calculation of the current capital gains tax rate.

Estimated Cost of Sale and Net to the Estate

11. The following are the estimated expenses of the sale:

Purchase price	\$350,000.00
Liquidating Agents Commission	-0-
Lienholder Balance:	-0-
Capital Gains Tax: (est.)	-0-

Estimated Closing cost (est.)	\$35,000.00
The estimated net proceeds of sale is	<u>\$315,000.00</u>

12. The Trustee believes that acceptance of this offer is in the best interest of the estate, will yield the most funds for distribution to creditors, and should be approved by the Court. A copy of this Motion is being forwarded to all creditors in accordance with Local Rule 9014.

Terms of Conveyance

13. The sale of the Real Property is subject to any higher and better offers that may be received resulting from the required notice and hearing of the proposed sale.

14. To the extent of the sale of the interest of the bankruptcy estate in the Real Property, the sale of the Real Property shall be made **“as is”, “where is”, with all faults, without any warranties, and without recourse on the Trustee or the bankruptcy estate.** All liens, claims, security interests, any other interests and encumbrances, if any, will attach to the proceeds of the sale and not to the property interests to be sold by the requested court order.

Request for Waiver of Local Rule 6004 (g)

15. The Trustee requests that the stay provided by Federal Rule of Bankruptcy Procedure Local Rule 6004(g) be vacated immediately so that this sale can be completed after entry of an Order on the docket.

WHEREFORE, PREMISES CONSIDERED, the Trustee prays that the Court enter an order, after 21 days pursuant to Local Rule 9014 if no objections are registered with the Clerk of the Court, authorizing and directing him to sell the Property for the cash consideration and under the terms indicated or to such other persons making a materially higher and better bid, and grant

to him such other relief to which he may show himself to be justly entitled

Respectfully submitted this the 24th day of April, 2015.

Respectfully submitted,

/s/ Jose C. Rodriguez

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CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I certify that (1) Copies of the Motion to Sell Real Property Free and Clear of All Liens and Interests and (2) A copy of the Proposed Order is attached as Exhibit "A", were mailed to the below named persons and to the additional parties as set forth in the attached matrix, by United States first class mail, postage prepaid or sent by Notice of Electronic Filing on this the 24th day of April, 2015:

Stephen B. Donnelly
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San Antonio, TX 78258
Debtor

J. Todd Malaise
Malaise Law Firm, P.C.
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San Antonio, TX 78209
Counsel for Debtor

James E. Feucht
Gretchen R. Feucht
385 Mystic Parkway
Spring Branch, TX 78070
Proposed Buyers

U.S. Trustee
P.O. Box 1539
San Antonio, TX 78295

/s/ Jose C. Rodriguez

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San Antonio, TX 78201-9507

Ashley Anne Donnelly
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San Antonio, TX 78258-4872

Bank of America
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El Paso TX 79998-2238

Bexar County
c/o David G. Aelvoet
711 Navarro Suite 300
San Antonio, TX 78205-1749

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319 Maverick Street
San Antonio, TX 78212-4637

Comal County
c/o Lee Gordon
P.O. Box 1269
Round Rock, TX 78680-1269

Comal County Tax Assessor/Collector
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New Braunfels, TX 78130-5005

Everbank
301 West Bay Street
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National Bankruptcy Department
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Phoenix AZ 85038-9505

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Resurgent Capital Services
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Methodist Stone Oak Hospital
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Mystic Shores Property Owners Assoc.
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